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Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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8204. Warranty and quitclaim deeds—Forms.

Cited to the point that words of inheritance in a will or trust were unnecessary to give a fee absolute. *First & American Nat. Bank v. H.*, 293NW535. See Dun. Dig. 2693.

8204-1. Uniform conveyancing blanks commission authorized.

Cited to the point that words of inheritance in a will or trust were unnecessary to give a fee absolute. *First & American Nat. Bank v. H.*, 293NW535. See Dun. Dig. 2693.

8204-4. Fees for recording.

Legislature did not intend to impose additional 25 per cent on affidavits and other instruments not prescribed or approved by uniform conveyancing blank commission. *Op. Atty. Gen.* (373B-10), Oct. 22, 1940.

8225. Record deemed notice—Exception.

Recitals in instruments affecting title to real estate do not constitute notice under certain conditions. *Laws 1941, c. 192.*

8225-3. Certain recitals not to constitute notice of contract for conveyance.—Where any instrument affecting the title to real estate in this state recites the existence of a contract for conveyance affecting such real property, or some part thereof, and the instrument containing such recital was recorded prior to 1910, in the office of the register of deeds of the county wherein said real property or some part thereof is situated, and no action or proceeding has been taken upon such contract for conveyance, and the time for performing the conditions contained in such contract expired prior to 1925, then such recital may be disregarded and shall not constitute notice of said contract for conveyance, either actual or constructive, to any subsequent purchaser or encumberer of said real property or any part thereof. (Act Apr. 10, 1941, c. 192, §1.)

8225-4. Same—Pending actions not affected.—Nothing contained in this act shall affect actions now pending or commenced within six months after the passage of this act in any court of this state. (Act Apr. 10, 1941, c. 192, §2.)

8236. Platting of land—Donations.

A town is required to install one substantial culvert for an abutting owner, where by reason of grading or regrading such culvert is rendered necessary for a suitable approach, and it is immaterial that county accepts a plat of land providing that all original construction of roads and drainage should be done by owners of respective lots in plat. *Op. Atty. Gen.*, (377a-3), Oct. 14, 1939.

8238. Dedication—Certification—Approval—Etc.

Intention to create exception from vendor's general undertaking to convey free from incumbrances cannot be presumed from fact that there is a dedication then of record, since, as against vendor, purchaser is entitled to rely upon vendor's general undertaking and is not bound to take notice of the recordation. *Miller v. S.*, (AppDC), 113F(2d)748.

A dedicator cannot attach any conditions or limitations inconsistent with legal character of dedication, or which are against public policy, or which take property designated from control of public authorities, and dedication will take effect regardless of such conditions which will be construed void. *Kuehn v. V.*, 292NW137. See Dun. Dig. 2626.

An individual dedicating a road to a township could not withhold from municipality sovereign power incident

to public use of road, and could not reserve exclusive right to maintain a water supply system along the road. *Id.* See Dun. Dig. 2626.

Fact that county approved plat does not make it liable for maintenance of dedicated highways. *Op. Atty. Gen.* (377b-10h), July 29, 1940.

8244. Notice by publication and service upon mayor, village president; etc.

Proceedings for vacation of any street or alley in any plat validated when such proceedings are in all respects properly taken and conducted, except that posted notice was not given. Not applicable to pending proceedings. *Act Mar. 6, 1941, c. 46.*

Where county condemning land entered into settlement agreement under which it paid cash and agreed to vacate another street abutting on property and give landowner 20 feet thereof, and landowner went into possession of strip of land, contention of land owner that he was rightfully in possession under claim of title and that no cause of action accrued against county in his favor for breach of its contract to vacate until his possession was disturbed by township authorities was without merit, since he did not acquire any title from county as it had no title to convey, and county could not even vacate street. *Parsons v. T.*, 295NW907. See Dun. Dig. 8467.

8226. Recording act—Unrecorded conveyance void.

9. Good faith—Notice.
Rights of bona fide purchasers at execution sale. 24 *MinnLawRev*805.

8229-11. Conveyances legalized.—All conveyances of real property within this State made prior to December 29, 1926, in which a married man conveyed real property direct to his wife, are hereby declared to be legal and valid, and all such conveyances heretofore actually recorded in the office of the proper Register of Deeds are declared legal and valid, and such conveyances and the record thereof shall have the same force and effect in all respects for the purposes of notice, evidence and otherwise as may be provided by law with respect to conveyances in other cases. This act shall not apply to any action or proceeding now pending in any of the courts of this state, or to any action which shall be commenced within six months after the passage of this act. (Act Apr. 21, 1941, c. 343, §1.)

8234. Mortgages, how discharged of record.

Where mortgagee taking possession contracted, in event of foreclosure, either to buy property for full amount of debt or to release any deficiency judgment procured pursuant to foreclosure, and on foreclosure purchased for less than debts, subject to accrued taxes, mortgagor was entitled to rentals collected by mortgagee during period of redemption, and they could not be applied either on accrued taxes or upon indebtedness, though there was no deficiency judgment, contract wiping out entire debt on foreclosure. *Wagner v. E.*, 288NW 1. See Dun. Dig. 6219.

Right of assuming grantee to be subrogated to senior mortgage paid by him as against an unknown recorded junior mortgage. 24 *MinnLawRev*121.

**COMMON LAW
DECISIONS RELATING TO REAL ESTATE
BROKERS IN GENERAL**

1. Representation of principal in general—misrepresentations and fraud of broker.

A contract appointing one "sole agent to sell" real estate for owners, without more, does not deprive owners of right themselves to sell, without liability for commission, to a purchaser not procured by agent. *Keller Corp. v. C.*, 291NW515. See Dun. Dig. 1141.

CHAPTER 64

Plats

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CHAPTER 65

Registration of Title

REGISTRATION

8248. Registered land—Adverse possession.

A mechanic's lien, in proper form, filed with registrar of titles, attaches to land as of commencement of improvements, the same as a lien filed in office of register of deeds for improvement upon land not registered under

Torrens Act. *Armstrong v. L.*, 296NW405. See Dun. Dig. 6062.

8249. Application—Who may make.—An application for registration may be made by any of the following persons:

First—The person or persons who singly or collectively own the land. Tenants in common shall join in the application.

Second—The person or persons who singly or collectively have the power of disposing of the land.

Third—Infants and other persons under disability, by their guardian duly appointed by the proper probate court in this state.

Fourth—A corporation, by its proper officer, or by an agent duly authorized by the board of directors.

Fifth—Any executor or administrator duly appointed by the proper probate court in this state.

Sixth—A municipal corporation, by its mayor and city clerk, in the case of a city, after a resolution duly passed by its common council so directing, and by the county auditor and chairman of the county board, in the case of a county, after a resolution passed by its county board so directing.

Seventh—Any person may make application when for at least 15 years the land has been in the adverse possession of the applicant or those through whom he claims title.

Eighth—The State of Minnesota, by the county auditor and chairman of the county board of the county in which the land is located, at the direction of the county board of such county, in the case of lands forfeited to the State for taxes, and held by it in trust for its taxing districts, or otherwise.

This provision is in addition to all other laws by which the State may register the title to land. (As amended Act Apr. 22, 1941, c. 378, §1.)

8251. Application, how signed and verified.

Act of notary in stamping his name and title and sealing instrument, but failing to sign his name to verification, was a mere irregularity not affecting jurisdiction of court. *Dean v. R.*, 292NW765. See Dun. Dig. 8356.

8254. May include several pieces.

Any number of adjoining tracts of land in the same county and owned by the same person and in the same right, or any number of tracts of land in the same county having the same chain of title, and belonging to the same person, may be included in one application. When approved by the Examiner of Titles and ordered by the District Court on petition of the applicant or applicants, non-adjoining tracts of land owned by the same person or persons in the same right having different chains of title may be included in one application. (As amended Act Apr. 22, 1941, c. 378, §2.)

8262. Form of summons—Service.

Judgment roll held to show that all known persons and persons in possession were duly served and that proper notice of publication was duly given. *Dean v. R.*, 292NW765. See Dun. Dig. 8361a.

8266. Trial—Reference.

In proceeding to register title to real estate, claimed by applicant and her mother, evidence held to sustain finding that following alleged delivery of deed from mother to daughter taxes were paid with funds belonging to applicant. *Cloutier v. C.*, 294NW457. See Dun. Dig. 8356.

Where referee filed a report of facts recommending a 10-day stay for applicant to file objections to entry of any order based on report, and caused a copy to be served upon applicant's counsel, and no objections were filed, court could enter a decree dismissing the application without further notice to applicant. *Ferch v. H.*, 295NW504. See Dun. Dig. 8361a.

8267. Dismissal.

Application for registration having been predicated upon effective exercise of option to purchase land, and referee having found as a fact that there was no exercise of option, conclusion of law by the court dismissing application was warranted. *Ferch v. H.*, 295NW504. See Dun. Dig. 8361a.

8268. Decree of registration—Effect.

Where in neither registration proceedings themselves nor by the record, existence of an unclaimed claimant is shown, want of jurisdiction does not appear from judgment roll itself, judgment of registration is not subject to collateral attack in a suit to quiet title. *Dean v. R.*, 292NW765. See Dun. Dig. 8361.

8271. Rights of person holding certificate of title.

A mechanic's lien, in proper form, filed with registrar of titles, attaches to land as of commencement of improvements, the same as a lien filed in office of register

of deeds for improvement upon land not registered under Torrens Act. *Armstrong v. L.*, 296NW405. See Dun. Dig. 8062.

Purchasers of Torrens titles are not bound by record of lien statements for old age assistance filed with register of deeds. *Op. Atty. Gen.*, (521p-4), Dec. 11, 1939.

8281. Certificate of title—Form—Contents.

The certificate of title shall contain the name and residence of the owner, a description of the land, and of the estate of the owner therein, and shall by memorial contain a description of all encumbrances, liens and interests in which the estate of the owner is subject. It shall state his age, and if under disability the nature thereof. It shall also state whether or not the owner is married, and, if married, the name of the husband or wife. In case the land is held in trust or subject to any condition or limitation, it shall state the nature and character thereof. It shall be substantially in the following form:

CERTIFICATE OF TITLE

No.

First certificate of title, pursuant to the order of the district court, judicial district, county of, and state of Minnesota, dated, 19....

REGISTRATION

State of Minnesota,
County of—ss:

This is to certify that, of the of county of, and state of is now the owner of an estate, to-wit, of and in the following described land situated in the county of and state of Minnesota, to-wit,

Subject to the encumbrances, liens and interest noted by the memorial underwritten or endorsed hereon; and subject to the following rights or encumbrances subsisting, as provided in Laws 1905, Chapter 305, Section 24, namely:

- (1) Liens, claims, or rights arising under the laws or the Constitution of the United States, which the statutes of this state cannot require to appear of record;
- (2) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title;
- (3) Any lease for a period not exceeding three years, when there is actual occupation of the premises under the lease;
- (4) All public highways embraced in the description of the lands included in the certificates shall be deemed to be excluded;
- (5) Such right of appeal or right to appear and contest the application as is allowed by law;
- (6) The rights of any person in possession under deed or contract for deed from the owner of the certificate of title.

That the said is of the age of years, is married, and is under disability.

In witness whereof, I have hereunto subscribed my name and affixed the seal of my office, this day of, 19....

Registrar of Titles, in and for the County of and State of Minnesota.

All certificates issued subsequent to the first certificate of title shall be in like form except that they shall be entitled "Transfer from number (here give the number of the next previous certificate relating to the same land)," and shall also contain the words "Originally registered (date, volume and page of registration)." (As amended Act Feb. 27, 1941, c. 33, §1.)

8293. Transfer of registered land.

Although an instrument in the form of a mortgage does not create a lien until registered, it does give rise to certain equitable duties. *Finnegan v. G.*, 292NW22. See Dun. Dig. 8270.

A devisee who acquired property by will at a time when no mortgage was registered and who did not have notice of the instrument executed by the devisor acquired a title subject to having the instrument registered as a paramount lien on order of the district court. *Id.* See Dun. Dig. 8302.

An instrument in the form of a mortgage in which the owner's spouse does not join can be registered under certain conditions when ordered by district court. *Id.* See Dun. Dig. 8280.

8295. New certificate—Interest less than fee.

Registrar need not memorialize old age lien certificates upon owner's duplicate. *Op. Atty. Gen.* (521p-4), Jan. 8, 1940.

8300. Mortgage.

Finnegan v. G., 292NW22; note under §8293.

8301. Registration of mortgage.

Finnegan v. G., 292NW22; note under §8293.

8309. Judgments a lien, when; etc.

A mechanic's lien, in proper form, filed with registrar of title, attaches to land as of commencement of improvements, the same as a lien filed in office of register of deeds for improvement upon land not registered under Torrens Act. *Armstrong v. L.*, 296NW405. See Dun. Dig. 6062.

8328. Registrar's fees.

(4).

In view of §3199-26(6) register of deeds paid only on a fee basis is entitled to a fee of only 25 cents in filing a certificate of lien in respect of old age assistance payments, though such certificate necessitates entry of a memorial on register or a cancellation in connection with registered lands. *Op. Atty. Gen.* (521p-4), Jan. 31, 1940.

CHAPTER 65A

Registration of Certain Trade-Names

COMMON LAW DECISIONS RELATING TO

TRADE-MARKS AND TRADE NAMES IN GENERAL

2. Unfair competition.

Manufacturer of "Parcheesi" held entitled to prelim-

inary injunction restraining use of name "Parchesi" and "Parchisi" pending determination of suit for trade-mark infringement and unfair competition. *Selchow & Righter Co. v. W.*, (CCA7, 112F(2d)430, aff'g (DC-Wis), 29FSupp 569.

CHAPTER 66

Homestead Exemption

8336. Dwelling place exempt—Exceptions.

1. Nature.

Homestead exemption is a creature of statute. *Dimke v. F.*, 295NW75. See Dun. Dig. 4195.

United States held not a person within state exemption law. *Troutman v. E.*, 28NE(2d)(Ohio)953.

Homesteads—application, of Minnesota statutes. 25 *MinnLawRev*66.

8340. No alienation without consent of spouse—Exceptions.

Lien against recipient of old age assistance is valid even without the consent of spouse. *Dimke v. F.*, 295NW 75. See Dun. Dig. 4211.

8342. Sale or removal permitted.

2. Notice of claim—Abandonment.

Filing notice under this section has no effect upon homestead rights for taxation purposes. *Op. Atty. Gen.*, (232d), May 13, 1940.

CHAPTER 67

Chattel Mortgages, Pledges and Conditional Sales

CHATTEL MORTGAGES

8345. Mortgages, when void.

½. In general.

Sig Ellingson & Co. v. M., 286NW713. *Cert. den.*, 60SCR 130. *Reh. den.*, 60SCR178.

Future advance provision in chattel mortgage held to cover additional loans by the mortgagee to the mortgagor even though they be secured by additional collateral. *State Finance Co. v. L.*, (CCA9), 113F(2d)59.

Mortgage filed in Minnesota would not be invalid for usury under Minnesota law, if it was valid in state where executed and where it is to be performed. *State v. Rivers*, 287NW790. See Dun. Dig. 1537.

Where there is no writing there is no "trust receipt transactions" and the case is governed by pre-existing law. *Associates Discount Corp. v. C.*, 30NE(2d)(Mass)876.

Fraudulent conveyances of chattels—chattel mortgages—sales—conditional sales. 24 *MinnLawRev*832.

10. What is good faith—Evidence of.

A finance corporation which loans money to an automobile dealer in exchange for trust receipts delivered to it before dealer received title to automobile was not a bona fide purchaser within meaning of Uniform Trust Receipts Act. *Metropolitan Finance Corp. v. M.*, 109Pac (2d)(Cal)969.

14. Motor vehicles.

Holder of a motor vehicle lien for storage or repairs is not estopped by his mere silence to assert his superior right against a purchaser with notice of foreclosure sale under chattel mortgage, though such purchaser believed lien to be outlawed. *Conner v. C.*, 294NW650. See Dun. Dig. 5579a.

Under Trust Receipts Law purchaser of car from dealer was entitled to ownership of car as against finance company's claim of ownership by reason of trust receipt,

where purchaser acted in good faith and without knowledge, and purchaser was a "buyer in the ordinary course of trade" though car acquired was not the one originally ordered. *Commercial Discount Co. v. M.*, 108Pac(2d)(Cal App)735.

19. Pledges.

Pledgee of a chose in action, under extreme circumstances indicating that loss to all concerned would have resulted if it had not accepted exchange of securities provided for by reorganization in bankruptcy of debtor, held properly to have accepted exchange as a compromise where procedure resulting in exchange was participated in by representatives of pledgor's estate without objection either to procedure or result. *First & American Nat. Bank of Duluth v. W.*, 292NW770. See Dun. Dig. 7744.

Pledgee of chose in action is under no absolute duty to collect full amount of obligation, duty being one of good faith and reasonable diligence in realization of as much as possible for himself and pledgor. *Id.*

8345-2. Mortgage to contain receipt of mortgagor.

A combined farm lease and chattel mortgage may not be filed where it does not contain mortgagor's receipt. *Op. Atty. Gen.* (373B-5), March 11, 1940.

8346. When filed.

½. In general.

The law of Wisconsin is that neither a sale by the mortgagor of property subject to a chattel mortgage, nor a subsequent sale by his vendee constitutes a conversion of the property described in the chattel mortgage. *U. S. v. Rogers & Rogers*, (DC-Minn), 36FSupp79.

8348. Index books—Limit of lien—When notice.

Sig Ellingson & Co. v. M., 286NW713. *Cert. den.*, 60SCR 130. *Reh. den.*, 60SCR178.